Supreme Court, U.S.
FILED
FEB 28 1991
OFFICE OF THE CLERK

(5)

No. 90-34

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

EXXON CORPORATION,

Petitioner,

—v.—

CENTRAL GULF LINES, INC., *in personam*, and the M/V GREEN HARBOUR (ex WILLIAM HOOPER), *in rem*, her engines, boilers, tackle, etc. and a certain Letter of Credit No. P 621208 dated December 26, 1984 issued by the Chase Manhattan Bank, N.A., *in rem*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT APPENDIX

ARMAND MAURICE PARÉ, JR.
Counsel of Record

BRADLEY F. GANDRUP, JR.

NOURSE & BOWLES
Counsel for Petitioner
One Exchange Plaza
At 55 Broadway
New York, New York 10006
(212) 952-6200

FRANCIS A. MONTBACH
Counsel of Record

KARIN A. SCHLÖSSER

BIGHAM, ENGLAR,
JONES & HOUSTON
Counsel for Respondents
14 Wall Street
New York, New York 10005
(212) 732-4646

PETITION FOR CERTIORARI FILED JULY 3, 1990
CERTIORARI GRANTED JANUARY 14, 1991

TABLE OF CONTENTS

Page

Chronological List of Relevant Docket Entries 5

Affidavit of Armand M. Paré, Jr., Esq.
in Support of Exxon's Motion for
Summary Judgment, filed 5/31/88..... 9

Sections of Relevant Exhibits to Paré Affidavit

Exhibit 1: Delivery Documents 15

Exhibit 2A: Exxon/Waterman Supply Contract..... 20

Exhibit 15: Excerpt of deposition of
Edward J. Matters 35

Exhibit 16: Excerpt of deposition of
James E. Sharkey..... 40

Exhibit 17: Excerpt of deposition of
Adam V. Rudzki 49

Exhibit 20: Affidavit of Arabian Marine
Operating Co. Ltd. Manager..... 53

Affidavit of Adam V. Rudzki
in Support of Exxon's Motion for
Summary Judgment, filed 5/31/88..... 56

Affidavit of James E. Sharkey
in Support of Exxon's Motion for
Summary Judgment filed 5/31/88..... 58

Sections of Relevant Exhibits to Affidavit

Exhibit 5: Exxon memorandum 63

Exhibit 7: Exxon order form..... 64

Exhibit 9: Exxon Invoice to Waterman 65

Exhibit 10: Handwritten notes of discussion with Arabian Marine..... 66

Exhibit 11: Exxon memorandum 67

Exhibit 12: Telex Correspondence..... 68

Exhibit 15: Exxon Invoice to Waterman 69

Exhibit 16: Arabian Marine Invoice to Exxon..... 70

Affidavit of Francis A. Montbach, Esq. in Support of Central Gulf's Cross-Motion for Summary Judgment, filed 6/23/88..... 71

Sections of Relevant Exhibits to Montbach Affidavit

Exhibit D: Excerpt of deposition of James E. Sharkey..... 79

Exhibit E: The Arabian Marine/Exxon Jeddah Bunkering Agreement 82

Exhibit G: Telex Invoice from Arabian Marine to Exxon 99

Exhibit H: Excerpt of deposition of Edward J. Matters 101

Exhibit I: Excerpt of deposition of Adam V. Rudzki 106

Exhibit J: Excerpt of deposition of Adam V. Rudzki 108

Exhibit K: Excerpt of deposition of James E. Sharkey..... 111

Exhibit M: Excerpt of deposition of James E. Sharkey..... 113

Exhibit N: Excerpt of deposition of Adam V. Rudzki 116

Exhibit O: Excerpt of deposition of James E. Sharkey..... 119

Exhibit P: Excerpt of deposition of Adam V. Rudzki 120

Exhibit S: Excerpt of deposition of James E. Sharkey..... 123

Exhibit W: Excerpt of deposition of Adam V. Rudzki 124

Exhibit X: Addendum to Arabian Marine/ Exxon Jeddah Bunkering Agreement and telex correspondence..... 131

Exhibit Z: Excerpt of deposition of James E. Sharkey..... 133

Exhibit AA: Excerpt of deposition of James E. Sharkey..... 134

Exhibit BB: Memorandum..... 135

Reply Affidavit of Armand M. Paré, Jr., Esq. in Further Support of Exxon's Motion for Summary Judgment, filed 7/21/88..... 137

Exhibit 3: Excerpt of deposition of Adam V. Rudzki 140

Reply Affidavit of Francis A. Montbach, Esq.
in Further Support of Central Gulf's Cross-Motion
for Summary Judgment, filed 8/2/88 145

Judgment, filed and entered 9/15/89 147

Notation Pursuant to Paragraph 2(c) of
the Clerk's Memorandum Concerning
Printing the Joint Appendix 149

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

	Date	Filing or Proceeding
1.	12/9/86	Exxon Corporation's ("Exxon") Summons and Complaint filed.
2.	1/6/87	Stipulation and Order extending the time to answer of Central Gulf Lines, Inc. *et al.* (collectively "Central Gulf") to 1/29/87 filed.
3.	1/9/87	Central Gulf's Answer filed.
4.	7/20/87	Order Substituting the firm of Nourse & Bowles for the firm of Kirlin, Campbell & Keating as counsel for Exxon filed.
5.	5/31/88	Exxon's Notice of Motion for Summary Judgment filed.
6.	5/31/88	Affidavits of Armand M. Paré, Jr., Esq., Adam V. Rudzki and James E. Sharkey in Support of Exxon's Motion for Summary Judgment filed.
7.	5/31/88	Exxon's Statement of Material Facts Pursuant to S.D.N.Y. Local Rule 3(g) filed.
8.	5/31/88	Exxon's Memorandum of Law in Support of its Motion for Summary Judgment filed.
9.	6/23/88	Affidavits of Francis A. Montbach, Esq. and Raymond J. Salassi, Jr. in Opposition to Exxon's Motion for Summary Judgment filed.
10.	6/23/88	Central Gulf's Memorandum of Law in Opposition to Exxon's Motion for Summary Judgment filed.

	Date	Filing or Proceeding
11.	6/23/88	Central Gulf's Notice of Cross-Motion for Summary Judgment filed.
12.	6/23/88	Central Gulf's Statement of Material Facts Pursuant to S.D.N.Y. Local Rule 3(g) filed.
13.	6/23/88	Affidavit of Francis A. Montbach, Esq. in Support of Central Gulf's Cross-Motion for Summary Judgment filed.
14.	6/23/88	Central Gulf's Memorandum of Law in Support of Central Gulf's Cross-Motion for Summary Judgment filed.
15.	7/21/88	Exxon's Answer to Central Gulf's Statement of Material Facts Pursuant to S.D.N.Y. Local Rule 3(g) Statement filed.
16.	7/21/88	Reply Affidavit of Armand M. Paré, Jr., Esq. in Further Support of Exxon's Motion for Summary Judgment filed.
17.	7/21/88	Exxon's Reply Memorandum of Law filed.
18.	8/2/88	Central Gulf's Reply Memorandum of Law filed.
19.	8/2/88	Central Gulf's Supplementary Answering Local Rule 3(g) Statement filed.
20.	8/2/88	Reply Affidavit of Francis A. Montbach, Esq. in Further Support of Central Gulf's Cross-Motion for Summary Judgment filed.
21.	10/14/88	Supplemental Affidavit of Adam V. Rudzki in Support of Exxon's Motion for Summary Judgment filed.

	Date	Filing or Proceeding
22.	3/3/89	Opinion and Order denying Exxon's claim for a maritime lien of $763,644.60 with respect to the Jeddah delivery for lack of admiralty jurisdiction and granting Exxon's claim for a maritime lien of $13,241.63 with respect to the New York delivery filed.
23.	3/13/89	Exxon's Notice of Motion for Reargument of the Court's Opinion and Order dated 3/3/89 filed.
24.	3/13/89	Exxon's Memorandum of Law in Support of Motion for Reargue filed.
25.	4/7/89	Central Gulf's Memorandum of Law in Opposition to Exxon's Motion to Reargue filed.
26.	4/14/89	Exxon's Reply Memorandum of Law in Support of Exxon's Motion for Reargument filed.
27.	7/21/89	Opinion and Order denying Exxon's Motion for Reconsideration of Opinion and Order dated 3/3/89 filed.
28.	9/15/89	Judgment Ordering that Exxon's claim for a maritime lien of $763,644.60 with respect to the Jeddah delivery is dismissed; that Exxon's claim for a maritime lien with respect to the New York delivery is granted in the total amount of $20,320.30; that Exxon shall recover taxable costs and that Exxon shall recover post judgment interest filed.
29.	9/15/89	Judgment entered on docket.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

	Date	Filing or Proceeding
30.	10/4/89	Exxon's Notice of Appeal filed.
31.	10/6/89	Central Gulf's Notice of Cross-Appeal filed.
32.	12/8/89	Record on appeal filed.
33.	12/18/89	Appellant-Cross-Appellee Exxon's brief filed.
34.	12/18/89	Joint Appendix filed.
35.	1/16/90	Appellee-Cross-Appellant Central Gulf's brief filed.
36.	1/29/90	Appellant-Cross-Appellee Exxon's reply brief filed.
37.	4/2/90	Oral argument before Circuit Judges Feinberg, Pratt & Walker.
38.	4/5/90	Judgment affirmed by Summary Order.
39.	5/3/90	Mandate (Order) issued.
40.	7/10/90	Receipt of notice of Exxon's filing of Petition for a Writ of Certiorari dated 7/3/90 in Supreme Court of the United States.
41.	1/16/91	Receipt of certified copy of the Order of the Supreme Court of the United States dated 1/14/91 granting Exxon's Petition for a Writ of Certiorari.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXXON CORPORATION,	
Plaintiff,	86 Civ. 9445 (WCC)
-against-	AFFIDAVIT OF ARMAND M. PARÉ, JR. IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
CENTRAL GULF LINES, INC. *in personam* and the M/V GREEN HARBOUR (ex WILLIAM HOOPER) *in rem*, her engines, boilers, tackle, etc. and a certain letter of Credit No. P 621208 dated December 26, 1984 issued by the Chase Manhattan Bank, N.A., *in rem.*,	
Defendants.	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ARMAND M. PARÉ, JR., being duly sworn, deposes and states:

1. I am a member of the bar of this Court and counsel to the firm of Nourse & Bowles, attorneys for plaintiff, Exxon Corporation ("Exxon"). I make this affidavit in support of Exxon's motion for summary judgment. The key issues in this case are whether United States law governs the dispute in this case and hence whether Exxon is entitled to a lien for gas oil and bunker fuel oil supplied to a vessel now known as the GREEN HARBOUR (ex WILLIAM HOOPER; hereinafter referred to as the "Vessel" or "HOOPER") which is owned by

defendant, Central Gulf Lines, Inc. ("Central Gulf"). At the time of the supplies, the Vessel was on charter to Waterman Steamship Corporation ("Waterman"). Central Gulf has agreed to be liable *in personam* if *in rem* liability exists against the Vessel for the supplies in question. It is respectfully submitted that the relevant facts are uncontestable thereby rendering this case particularly appropriate for summary judgment.

2. Attached as Exhibit "1" is a letter dated July 25, 1984 from White & Case, former attorneys for Waterman at the time these claims were pending before the Bankruptcy Court in Waterman's Chapter XI Petition. This letter was copied to Central Gulf's former New York lawyers, Hill, Rivkins and also to Central Gulf's New Orleans lawyers, Jones, Walker. Enclosed with that letter from Waterman's attorneys and attached as exhibits hereto are the following:

Ex.-1-a. Engine Room Logs for the Vessel for October 26, 1983 showing the bunker fuel delivery at Jeddah.

Ex.-1-b. Fuel and water report for the Vessel on October 26, 1983 showing the bunker fuel delivery at Jeddah.

Ex.-1-c. Bunker Oil delivery receipt from barge M/T ZEINA re Jeddah delivery.

Ex.-1-d. Bunker Oil delivery receipt from barge M/T AABIBA re Jeddah delivery.

Ex.-1-e. Exxon invoice received by Waterman for Jeddah delivery.

Ex.-1-f. Voyage data report for voyage showing bunker fuel delivery at Jeddah.

Ex.-1-g. Telex on October 27, 1983 from Arabian Marine advising of delivery.

Ex.-1-h. Telex from Waterman/Athens to Waterman/NY advising of bunker fuel delivery at Jeddah.

In view of Waterman's admissions of the above Waterman records, Central Gulf cannot legitimately contest in a responding 3(g) Statement the authenticity of these documents or the facts which they evidence, including but not limited to the fact that bunker fuel was delivered to the Vessel at Jeddah on October 26, 1983.

3. Attached as Exhibit "2" is a further letter dated August 15, 1984 from White & Case, attorneys for Waterman, enclosing a "true and correct copy" of the 1983 Exxon/Waterman Fuel Oil Contract which is attached as Exhibit "2-a" (other exhibits are not attached as they would be duplicative of those in Exhibit "1"). In this letter, Waterman also indicated its agreement to stipulate to the following:

a. Waterman requested that Exxon supply the bunker fuel in question at Jeddah in accordance with the preexisting Exxon/Waterman contract dated April 8, 1983.

b. The Vessel was physically supplied with 4,242.2/7 metric tons (4,175.47 long tons) of bunker fuel oil on October 26, 1983 and true and accurate copies of receipts were admitted (these are attached hereto as "Ex.-1-c" and "Ex.-1-d").

c. Exxon invoiced Waterman for this delivery and Waterman had not paid for the supply.

4. Attached as Exhibit "3" is the Certificate of Ownership of the Vessel showing that the United States of America holds a First Preferred Mortgage on the Vessel and that her port of registry is New Orleans. Attached as Exhibit "4" is Central Gulf's Promissory Note to the United States of America together with the loan amortization schedule showing a balance owed to the United States in excess of ten million dollars at the

time of the supplies. Attached as Exhibit "5" is the Security Agreement and other documents between Central Gulf and the United States of America regarding the Vessel.

5. Attached as Exhibit "6" are certain addenda evidencing the Construction Differential Subsidy Agreement between the United States of America and Central Gulf pursuant to which the latter obtained a subsidy from the United States Government to build the Vessel in the United States, where building costs are generally higher than building abroad. Attached as Exhibit "7" is an addenda relating to the contract for the construction of the Vessel (hull No. 2257) (see Section I(b)). Attached as Exhibit "8" is the current entry from Lloyd's Register of Ships showing the Vessel's hull number (2257).

6. Attached as Exhibit "9" is the bareboat charter party for the Vessel between Central Gulf, as Owner and Waterman, as Charterer. This charter had to be approved by the Assistant Secretary of Commerce for Maritime Affairs of the United States in accordance with Article II, Section 2.04(c) of Exhibit 1 of the Security Agreement (Exhibit "5"). The charter party provides for arbitration of disputes between Central Gulf and Waterman in New York and application of U.S. Law.

7. Attached as Exhibit "10" are excerpts from the Journal of Commerce for September and October, 1983 showing that the HOOPER was engaged in Waterman's U.S. flag liner trade to and from ports in the United States and the "Red Sea-Persian Gulf."

8. Attached as Exhibit "11" is a copy of the cover page, table of contents, and Rule II(A) of Waterman's common carrier freight tariff covering the trade in question which tariff was on file with the Federal Maritime Commission, as required by United States law.

9. Attached as Exhibit "12" is the "8900" Lines Agreement to which Waterman was a party. This is a conference agreement among several carriers which serves to enable the various signatories to cooperate with each other with respect to

certain trade route, including Waterman's service to Saudi Arabia involved in this case. The "8900" Agreement is filed with the Federal Maritime Commission which thereby provides the signatories with an exemption from the anti-trust laws. The Agreement provides in Appendix "B", clause M, that disputes shall be arbitrated in New York and subject to "U.S. Federal law and the law of the State of New York.

10. Attached as Exhibit "13" are addenda to the Operational Differential Subsidy Agreement between the United States of America and Waterman pursuant to which the Vessel was included among those ships for which Waterman received an operational subsidy from the United States in connection with the trade route in question. In order to qualify for this, Waterman was required to use U.S. flag ships and American crews, as indicated.

11. Attached as Exhibit "14" are the first 10 pages of the Waterman Form 10-K filed with the Securities and Exchange Commission prior to Waterman's filing for reorganization, which Form 10-K makes reference to the U.S. flag carrier trade route in question and the Operational Differential Subsidy.

12. Attached as Exhibit "15" are pages 14-20 of the transcript of the testimony of Mr. Edward Matters. This portion of the testimony explains how Exxon came to agree in October, 1983 to directly make two supplies to Waterman vessels at Jeddah in place of Arabian Maritime Operating Co. Ltd. (the STONEWALL JACKSON and the WILLIAM HOOPER; this case only involves the WILLIAM HOOPER but reference to the STONEWALL JACKSON helps explain the background).

13. Attached as Exhibit "16" are pages 48-56 and 62-65 of the transcript of Mr. James E. Sharkey explaining how Exxon agreed with Waterman to make the two deliveries in question to Waterman vessels at Jeddah in October, 1983.

14. Attached as Exhibit "17" are pages 73-76 of the transcript of Mr. Adam Rudzki, the Credit Manager of Exxon

Company, International, explaining the decision by Exxon to supply the STONEWALL JACKSON and WILLIAM HOOPER in Jeddah in October, 1983.

15. On December 1, 1983, Waterman filed a Chapter XI bankruptcy proceeding which had the effect, *inter alia*, of preventing Exxon from enforcing its *in rem* lien rights against the HOOPER by writ of maritime arrest and of preventing Exxon from recovering the amounts due from Waterman in connection with the aforesaid two deliveries.

16. On or about March 30, 1984, Exxon moved to lift the automatic stay imposed by the bankruptcy court to permit Exxon to arrest the Vessel on account of the aforesaid deliveries or, alternatively, for adequate protection of its *in rem* lien claim against the Vessel.

17. Prior to determination of that motion, an agreement was entered into among Exxon, Central Gulf and Waterman pursuant to which Central Gulf agreed to assume personal liability to the extent that *in rem* lien liability existed against the Vessel (the "Agreement"). A copy of the Agreement is attached as Exhibit "18." A copy of the original and amended letter of credit issued to Exxon is attached as Exhibit "19" ("Letter of Credit").

18. Exxon is a New Jersey corporation with a principal place of business in New York; Central Gulf is a Delaware corporation with an office and place of business in New York; and Waterman is a New York corporation with a principal place of business in New York.

19. Attached as Exhibit "20" is an affidavit from Arabian Marine's Mr. Camille Hakim and statements from the various barge officers stating that they had no information that a lien for bunkers was prohibited by the relevant charter.

/s/ Armand M. Paré, Jr.

Sworn to before me this
23rd day of May, 1988.

/s/Sharon A. Graves
Notary Public

BUNKER OIL DELIVERY RECEIPT
ARABIAN MARINE OPERATING CO., LTD.

M/T, ZEINA

Date: 26th Oct, 1983

Account of: Messrs. Waterman Steamship Corporation

M/S S/S William Hooper

Port: Jeddah, S.A.

Description: B.F.O.

Quality:

Specific Gravity @ 15°C	Flash Point
0.9646	240

Viscosity			Water
Red Wood 1 100 F		1010	Trace
Kinematic Vis	cSt @ 50°C	125	
	cSt @ 40°C	210	

Quantity	Kiloliter	Metric Ton	Long Ton
	1,053.21	1,042.47	1,026.00

The foregoing quality and quantity are correct in every respect.

Chief Engineer /s/ Russell J. [illegible] C/B

Captain_____

Arabian Marine Operating Co., Ltd._____

Sample(s) on board

[Stamped by S.S. WILLIAM HOOPER and by Arabian Marine Operating Co. Ltd.
/s/ Y. Uchida]

BUNKER OIL DELIVERY RECEIPT
ARABIAN MARINE OPERATING CO., LTD.

M/T, HABIBA

Date: 26th Oct, 1983

Account of: Messrs. Waterman Steamship Corporation

M/S S/S William Hooper

Port: Jeddah, S.A.

Description: B.F.O.

Quality:

Specific Gravity @ 15°C	Flash Point
0.9646	190

Viscosity			Water
Red Wood 1 100 F		1000	Trace
Kinematic Vis	cSt @ 50°C	120	
	cSt @ 40°C		

Quantity	Kiloliter	Metric Ton	Long Ton
	3,317.44	3,200.00	3,149.47

The foregoing quality and quantity are correct in every respect.

Chief Engineer /s/ [illegible]_____

Captain_____

Arabian Marine Operating Co., Ltd._____

Sample(s) on board

[Stamped by S.S. WILLIAM HOOPER and by Arabian Marine Operating Co. Ltd. /s/ Y. Uchida]

DIRECT INQUIRIES TO:
EXXON INTERNATIONAL COMPANY
A DIVISION OF EXXON CORPORATION
CONTROLLER'S DEPARTMENT
200 PARK AVENUE
FLORHAM PARK, NJ 07932

UNLESS PAYMENT INSTRUCTIONS ARE INDICATED BELOW, PLEASE REFER TO REVERSE SIDE

TELEPHONE NO. (201) 765-5721
DO NOT SEND PAYMENT TO ABOVE ADDRESS

S/S/ WILLIAM HOOPER & OWNERS

WATERMAN STEAMSHIP CORPORATION
708 RICHARDS BLDG.
NEW ORLEANS, LA. 70112

YOUR ACCT # 100119592

Invoice Number Please Show on Remittance: 115019

Payment due: 11/30/83 Invoice Date: 08NOV83

Original Delivery Location and Date: Jeddah 26OCT83
Title Transfer Location and Date: [Illegible]
[Illegible] Ref.: 11H03
Supplier: 999 Order No.:VOY13
Discharge Port
Delivery Via
ETI REF
Supplier
Nomination
Voyage
Description: Bunker C
Quantity: 4,242.470T
Price: 180.000/T
Net Value: 763,644.60

[Stamped: "Certified and approved for payment WATERMAN STEAMSHIP CORPORATION" /s/ [Illegible] Other stamped notations partially illegible and omitted in printing]

This invoice is based on the receivable, transferred to Exxon International Company, Which Arose from Signed Delivery Receipt No. XXX

•

WACOR 423228 9
OCT 27 1983 06310
WACOR 423228

TAA192 IN 27/06:22 OUT 27/06:33

2775 ULA PK

FM ULINERS KARACHI
TO WACORSHIP NEWYORK -38
CC WACORSHIP ATHENS - 60
DI 27/10/83

RELEE/33 DOCUMENTS FORWARDED BY DHL COURI-
ERS UNDER RECEIPT NO.018896
STOP KINDLY ACK RECEIPT.

++++

2775 ULA P
2775 ULA PKVVXMMMMM
•

WACOR 423228 . . . . .
OCT 27 1983 06380
WACOR 423228
401083 SASHIP SJ

TO: WATERMAN STEAMSHIP CORP. (NEW YORK)
FM: ARABIAN MARINE OPERATING CO. (AMOCO)
JEDDAH

++++++
AMOCO 102707
RE BUNKER SUPPLY TO "WILLIAM HOOPER" CM
CONFIRMING SUPPLIED YR GOOD VSL AS FOLLOWS:-

(1) VSL'S NAME : WILLIAM HOOPER
(2) DATE OF SUPPLY : 26TH OCTOBER 1983
(3) SUPPLIED QTY : BFO 28,000.00BBLS
(4,242.47MT)

TKS AND BEST REGARDS.

-AMOCO-

NNN0
WACOR 423228
401083 SASHIP SJ

REPLY VIA ITT

EXXON MARINE FUEL CONTRACT

No. 77100

THIS CONTRACT is made as of April 8, 1983, between EXXON INTERNATIONAL COMPANY (a division of Exxon Corporation) hereinafter called Seller, of 1251 AVENUE OF THE AMERICAS, NEW YORK, N.Y. 10020, and of WATERMAN STEAMSHIP CORPORATION, hereinafter called Buyer, of 120 WALL STREET, NEW YORK, N.Y. 10005.

Seller agrees to sell or cause to be sold, the marine fuel described below (hereinafter called "Marine Fuel") and Buyer agrees to purchase such Marine Fuel upon the terms and subject to the conditions hereinafter set forth.

ARTICLE I, DURATION

Section 1.1 Sales and deliveries under this Contract shall be made during the period beginning January 1, 1983, and ending December 1983.

ARTICLE II, MARINE FUEL

Section 2.1 The Marine Fuel to be sold hereunder shall be the commercial grades of Bunker Fuel Oil and/or Intermediate Bunker Fuels and/or Marine Diesel Oil and/or Light Marine Diesel Oil and/or Marine Gas Oil offered at the time and place of delivery by Seller or by the Supplying/Delivering Company (hereinafter called Supplying Company), referred to in Section 3.1 hereof. Buyer shall have the sole responsibility for the selection and acceptance of Marine Fuel for use in the vessels to which such Marine Fuel is delivered.

ARTICLE III, QUANTITIES

Section 3.1 Buyer shall, during the period of this Contract, purchase a minimum of 1,200,000 barrels of Marine Fuel, but not more than a maximum of 1,300,000 barrels provided that

such purchases shall be made at an approximately equal quarterly rate during the term of this Contract, (such "quarters" being each of consecutive three-month periods beginning with the date of this Contract); and provided further that during the period of this Contract, the minimum and maximum quantities thereof to be purchased in various geographical areas of the world shall be as shown on Exhibit A annexed hereto (which this and other exhibits as now existing, revised or added by mutual agreement are hereby incorporated herein and made a part of this Contract). Such purchases shall be made at the ports, and be delivered by the Supplying Companies, referred to in Seller's "International Contract Price List for Marine Fuel Delivered as Ships' Bunkers" (hereinafter called "Seller's Price List"), which list is revised and sent to Seller's contract customers from time to time. A copy of Seller's Price List, current as of the date of this Contract, has been provided to Buyer, or will be provided to Buyer on request.

ARTICLE IV, PRICE

Section 4.1 The price of Marine Fuel delivered hereunder shall be the established selling price effective for the time and place of delivery by Seller or Supplying Company, as the case may be, for the grade of Marine Fuel delivered. Buyer shall also pay all applicable duties, taxes, fees and other costs including, without limitation, those imposed by governments and authorities, and barging and other delivery charges, all of which shall be included in Seller's invoices to Buyer.

ARTICLE V, PAYMENT

[Sections 5.1 and 5.2 deleted by parties in the original]

Section 5.3 Payment as defined in Section 5.2 above shall be made either to Seller at Seller's address set forth above or by telegraphic transfer of funds to a bank designated by Seller. Payment shall be deemed to have been made (a) in the case of a direct payment to Seller on the date of receipt of good funds at Seller's said address, or (b) in the case of a telegraphic transfer, on the date the payment is credited to Seller's account at a bank designated by Seller.

ARTICLE VI, DELIVERIES

Section 6.1 Vessels will be bunkered as promptly as circumstances permit but neither Seller not Supplying Company shall be liable for demurrage or any loss due to congestion at the terminal or to prior commitments of available barges.

Section 6.2 Delivery shall be made during working hours unless required at other times (including public or bank holidays, Saturday afternoons and Sunday) and permitted by port regulations, in which event Buyer shall reimburse Seller or Supplying Company for all additional expenses incurred in connection therewith. If a government permit is required for deliveries hereunder, no deliveries shall be made until the permit has been issued to Buyer.

Section 6.3 At ports where barging facilities are available to Seller or Supplying Company at current rates and on reasonable terms, delivery of Marine Fuel hereunder shall be made by barge provided or caused to be provide by Seller or Supplying Company to Buyer's vessel within normal harbor limits as established by Seller or Supplying Company. When deliveries are made by barge, Buyer shall pay the applicable barging charges plus transportation taxes, if any (subject to minimum delivery provision), at port of loading and shall provide steam or pay for tug pumping charges if required to effect delivery. If in Seller's or Supplying Company's judgement the making of a barge delivery or deliveries will cause a labor dispute with, or a strike by, its employees, Seller or Supplying Company may refuse to make such deliveries and Buyer shall be required to provide its own barges.

Section 6.4 At all ports barging provided by or caused to be provided by Seller or Supplying Company shall be charged on not less than ninety per cent (90%) of the quantity ordered or tendered, whichever is less; and Buyer shall also be charged for all additional expenses incurred by Seller or the supplying Company in connection with Buyer's failure to take delivery of the full quantity ordered by Buyer. In the event Buyer fails to take delivery of the full amount ordered or tendered, whichever

is less, of marine fuel either ex barge or ex terminal, Seller will charge Buyer the amount of loss sustained by having to sell the fuel in down-graded form at a lower price than that at which it was ordered.

Section 6.5 If Buyer causes delays to Seller's or Supplying Company's facilities in effecting deliveries, Buyer shall pay demurrage at Seller's or Supplying Company's established rates, and reimburse Seller or Supplying Company for all other expenses in connection therewith.

Section 6.6 In the event Buyer's or Seller's operation at any delivery location where Seller provides services is to be discontinued for any reason, either party shall have the right to cancel this Agreement as to such locations. Said cancellation shall be effective no earlier than the date of written notice to the other party; however, every effort will be made to give at least 30 days notice of such cancellation.

Section 6.7 Additional provisions relating to delivery and other matters appear on the back of this page and are a part of this Contract.

If this Contract is signed by an agent for a principal as Buyer hereunder, then such agent shall be liable not only as agent but also for the performance of all obligations of the principal hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

JES:rk

WATERMAN STEAMSHIP CORPORATION

Buyer

BY_____

EXXON INTERNATIONAL COMPANY

(a division of Exxon Company)

BY_____

EXXON MARINE FUEL CONTRACT

(A) QUANTITY DETERMINATION:

The quantity of Marine Fuel delivered under the Contract shall be determined from the official gauge of the barge effecting delivery or by gauging in Seller's or Supplying Company's shore tank or by Seller's or Supplying Company's oil meter at Seller's or Supplying Company's election. Except where government regulations or local authorities determine otherwise, adjustment in volume owing to difference in temperature shall be made in accordance with API/ASTM-IP Petroleum Measurement Standards for Generalized Products (Table 6B, 24B or 54B depending on port location). In the measurement of Marine Fuel, Seller or Supplying Company shall make allowance for all water and non-petroleum sediment in excess of one per cent (1%). Buyer may be present or represented by properly accredited agent when such measurements are taken, but if Buyer is not present or represented, then Seller's or Supplying Company's determination of quantities shall be deemed to be correct. Buyer may inspect the oil delivered hereunder before it is pumped out of the Seller's or Supplying Company's shore tank or barge. Buyer may inspect the oil delivered hereunder before it is pumped out of the Seller's or Supplying Company's shore tank or barge. Buyer waives any claim against Seller or Supplying Company with respect to the quantity, quality or price of any Marine Fuel delivered under this Contract unless Buyer's claim is submitted to Seller in writing within forty-five (45) days after date of invoice pertaining to the delivery of Marine Fuel with respect to which said claim is made.

(B) COLLECTIONS:

Deliveries of Marine Fuel hereunder are made not only on the credit of the Buyer but also on the faith and credit of the vessel which uses the Marine Fuel and it is agreed that Seller and Supplying Company will have and may assert a lien against such vessel for the amount of the delivered price of said Marine Fuel. Additionally, the Seller and Supplying Company

will have and may assert a lien for the said amount of the delivered price against such vessel, should the laws applicable at the place of Seller's address which is set forth in the beginning of this Contract, at the place of delivery of the Marine Fuel and/or at the place of seizure of such vessel, grant or recognize a lien for Marine Fuel delivered to a vessel. In the event of any breach of this Contract by Buyer, or the default by Buyer in the payment of any indebtedness to Seller, whether such indebtedness arises out of this Contract or otherwise, or in the event Buyer becomes bankrupt or its financial condition becomes unsatisfactory to Seller, then Seller and Supplying Company shall have the right, in addition to any other rights or remedies they may have, to suspend deliveries hereunder, and Seller shall be entitled to terminate this Contract. If at any time a price provided in this Contract shall not then conform to the applicable laws, regulations or orders of a Government or other competent authority, appropriate price adjustments will be made; provided, however, that in the event Seller is at any time prevented from collecting, or Buyer is required to pay more than, the full price provided for in the Contract, including changes in said price pursuant to other provisions hereof, the party adversely affected shall have the option at any time thereafter while such condition exists to cancel this Contract as to any affected delivery location upon thirty (30) days' written notice to the other.

(C) FORCE MAJEURE:

In addition to any other excuses (arising out of the same or other causes) provided by law, no failure or omission by either party to carry out or observe any of the provisions or conditions of this Contract shall give rise to any claim against that party, or be deemed to be a breach of this Contract, if the same shall arise out of causes not reasonably within the control of that party, whether or not foreseen, including (without limitation) such causes as labor disputes, strikes, governmental intervention, or Seller's response to the insistence or request of any governmental instrumentality or person purporting to act therefor, wars, civil commotion, fire, flood, accident, storm or any act of God: and the term "party" when used with reference

to Seller shall also include the Supplying Company, Exxon Corporation and its subsidiary and affiliated companies. Under no circumstances, however, shall Buyer be excused under this paragraph of Buyer's obligation to make payment for all amounts due on account of Marine Fuel previously delivered hereunder. The quantity of Marine Fuel which has not been delivered for the reasons stated in this Section (C) shall be deducted from the quantity or Marine Fuel to be sold and purchased under this Contract. Failure to deliver or accept delivery of Marine Fuel which is excused by, or results from, the operation of this Section (C) shall not extend the term of this Contract.

(D) SHORTAGE OF OIL:

If, as the result of any of the events, matter or things referred to in Section (C), or any other foreseeable or non-foreseeable event, including contractual changes relating to the supply of crude oil and/or petroleum products from which Marine Fuel of the type to be sold hereunder is derived, supplies of Marine Fuel are curtailed, or are available to Seller or supplying Company only under conditions which, in Seller's sole judgement are deemed unacceptable, Seller may allocate, on any fair and reasonable basis according to its own discretion its available supplies of Marine Fuel to meet its own requirements and those of its subsidiaries and affiliated companies and other customers, including Buyer and, at Seller's option, customers not then under contract; and Seller shall not be required to increase supplies from some other source of supply or to purchase Marine Fuel to replace the supplies so curtailed.

(E) DELIVERIES:

Buyer shall give Seller, unless otherwise requested by Seller, at least seven (7) days prior notice of deliveries required, specifying the name of the vessel, vessel's agents, approximate date of delivery, location and method of delivery and grade and quantity of Marine Fuel. Buyer or vessel's local agents shall give to Supplying Company at each port where deliveries are required at least forty-eight (48) hours advanced

notice (unless otherwise stated in Seller's Price List). Sundays and holidays excluded, of the exact quantity required and exact location and time at which delivery is required. Buyer agrees to reimburse Seller or Supplying Company for overtime and/or other additional expenses incurred due to the failure of Buyer, its servants or vessel's local agents to provide Supplying Company with sufficient prior notice of amendments of delivery time, quantity changes or cancellations. Buyer shall make all connections and disconnections between the delivery hose and vessel's intake pipe, and shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly all deliveries hereunder. At Buyer's request, deliveries will be made alongside Seller's or Supplying Company's dock if facilities for such deliveries are shown to be available in Seller's Price List. In no case shall Seller or Supplying company be liable for any damage or delay resulting from causes beyond their control or avoidable by due care on the part of Buyer or its vessel. All deliveries shall be deemed to be complete and title shall pass to Buyer when the Marine Fuel has reached the flange connecting the delivery facilities provided by Seller or Supplying Company with the receiving facilities provided by Buyer. The Marine Fuel shall be pumped at the risk and peril of Seller or Supplying Company up to that flange only and thereafter Seller or Supplying Company shall not be responsible for any loss or damage. Anything herein contained to the contrary notwithstanding Seller's obligation to make any delivery hereunder is subject to the availability to Seller or Supplying Company at the port at which delivery is requested, of the particular grade of Marine Fuel requested by Buyer. Buyer shall indemnify Seller and Supplying Company against all damage and liabilities arising from any acts or omissions of Buyer or its servants, ships' officers or crews in connection with the delivery of Marine Fuel under this Contract.

(F) ENVIRONMENTAL PROTECTION:

If an escape, spillage or discharge of oil (hereinafter referred to as a "spill") occurs while Marine Fuel is being delivered to Buyer hereunder. Buyer will promptly take such action

as is reasonably necessary to remove the oil and mitigate the effects of such spill. However, notwithstanding the cause of such spill, Seller or Supplying Company is hereby authorized at its option, upon notice to Buyer, or Buyer's operator of, or agent for, the receiving vessel, to take such measures, either in cooperation with Buyer, or exclusively as the sole party, and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary, in the judgement of Seller or Supplying Company, to remove the oil and mitigate the effects of such spills. If Seller has exercised its option to remove the oil and mitigate the effects of such spill, Buyer agrees to cooperate and render such assistance as is required by Seller in the course of such action. Any expenses, damages, costs, fines and penalties arising from escape, spillage, discharge or pollution of oil shall be paid by the party that caused such escape, spillage, etc. by a negligent act or omission. If both parties have acted negligently, any expenses etc. shall be divided between the parties in accordance with the respective degree of negligence. Buyer also agrees to give or cause to be given, to Seller, all such documents, and other information concerning any spill or any program for the prevention thereof, which are requested by Seller, or required by law or regulation applicable at the time and place where Seller or supplying Company delivers Marine Fuel to Buyer.

(G) MISCELLANEOUS:

Notices hereunder shall be mailed to Seller and to Buyer at the addresses first above given. Either party may change its address by giving fifteen (15) days' prior written notice of its new address to the other party. No waiver by either party of any breach of any of the covenants or conditions herein contained to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition. The entire Contract is contained herein and there are no oral understandings, representation or warranties affecting it. Buyer shall not assign any right or delegate any obligation under this Contract without the prior written consent of Seller. No claim shall be made hereunder for indirect or consequential damages. This Contract shall be governed

by the Laws applicable at the place of Seller's address which is set forth at the beginning of this Contract to the exclusion of any other legal system. Each party expressly submits itself to the jurisdiction of the appropriate court pertaining to Seller's address. Said court shall have exclusive jurisdiction of any litigation arising under this Contract. There is no implied warranty of workmanlike performance with respect to this Contract, other than services provided by employees of Seller or Supplying Company in conjunction with the delivery of Marine Fuel as provided for in this Contract. This Contract shall not be modified or amended in any way except in writing by the parties.

AMENDMENT A TO BASIC CONTRACT DATED 08 APR 83

Between Waterman Steamship Corp. and Exxon International Company (a division of Exxon Corporation) Agreement Dated 01 Jun 83

This Amendment Changes Specific Price Concessions at Stated Ports for Certain Products Granted Buyer in Said Contract. The Amended Price Concessions Shown Below May Supersede Certain Price Concessions or Portions Thereof Granted to the Original Contract or Amendments Thereto and Shall Become Effective on the Dates Shown Following Each Numbered Price Concessions Below.

COLOMBO CONCESSIONS RE-INSTATED

No.	Port/County/ Area Designation	Product Abbrev.	Amount of Price Concession	$	D or T	Type	Effective Date	Expiry Date	Item	Special Payment Method
1	Colombo	BFO	4.50	$	T	TA	01 JUN 83	FUFN*	#1	
2	Colombo	BFO	6.50	$	T	TA	01 JUN 83	FUFN*	#2	
3	Colombo	BFO	8.00	$	T	TA	01 JUN 83	FUFN*	#3	

* Firm Until Further Notice
Condition #1 - Minimum Delivery of 1 to 500 Metric Tons
Condition #2 - Minimum Delivery of 501 to 1000 Metric Tons
Condition #3 - Minimum Delivery of 1001 and Over Metric Tons

All Other Terms and Provisions of This Contract Shall Remain Unchanged

Buyer_____ Seller_____

J.A. 30

This Exhibit A is Annexed to and Made a Part of the Marine Fuels Contract

Dated: 08 APR 83 between Waterman Steamship Corporation and Exxon International Company (a division of Exxon Corporation) Covering the Contract

Period 01 JAN 83 through 31 DEC 83 and the Provisions of this Exhibit are Subject to the Terms and Conditions of Such Contract. In Addition to its Own Requirements, Buyer Shall Cause the Following Named Companies to Purchase Their Marine Fuel Requirements Under This Contract as Set Forth Below: [Illegible]

Temporary Allowance Credited with Each Invoice.
Special Prices Invoiced Net.

{ When Buyer's Purchases from Seller's Supplying Companies Meet the Conditions Itemized Below

Buyer Shall be Entitled to the Price Concessions Shown on Subsequent Pages of this Exhibit When Purchases from Seller's Supplying Companies Meet the Itemized Conditions Set Forth Below:

Item	Port/County/ Area Designation	Product Abbreviation	Minimum Volume	Maximum Volume	MB or MT	% of Reqmt.
A	Worldwide	All	1200.0	1300.0	B	

Signed Buyer Seller

J.A. 31

CONTINUATION OF EXHIBIT A TO THE MARINE FUELS CONTRACT

Date 08 APR 83 between Waterman Steamship Corporation and Exxon International Company (a division of Exxon Corporation) covering the period January 1, 1983 through December 31, 1983 the Price Provisions of the Exhibit Shall Become Effective on the Dates shown Following Each Numbered Price Concession, Discounts Shown Below Shall be Deducted from the Prices Prescribed by Section 4.1 of this Contract as Shown in Seller's Price List for the Locations Concerned. When Buyer's Purchases from Seller's Supplying Companies Meet the Itemized Conditions Shown on Preceding Pages of this Exhibit and Referred to by Item Following Each Numbered Price Concession Below, Buyer Shall be Entitled to the Price Concessions Described Below, in the Event Certain of the Price Concessions Granted Below Shall be Credited to Buyer in a Manner Different from the Method Shown on the First Page of This Exhibit, Such Exceptions are Shown below Shall be Credited to Buyer in a Manner Different from the Method Shown on the First Page of this Exhibit, Such Exceptions are Shown Below Under the Heading "Special Payment Method" Following the Particular Numbered Price Concession Concerned.

J.A. 32

Concession Number	Port/ Country/ Area Designation	Product Abbreviation	Amount of Price Concession	B or $ T	Type	Effective Date	Expiry Date	Condition Items	Special Payment Methods
01	USEC-Main Ports	BFO	1.30	$ T	TA	01 JAN 83	FUFN*		
02	USGC-Main Ports	BFO	1.30	$ T	TA	01 JAN 83	FUFN*		
03	USWC-California	BFO	1.30	$ T	TA	01 JAN 83	FUFN*		
04	Eastern Canada-Main Ports	BFO	3.00	$ T	TA	01 JAN 83	FUFN*		
05	Western Canada	BFO	3.00	$ T	TA	01 JAN 83	FUFN*		
06	Singapore	BFO	11.00	$ T	TA	01 JAN 83	FUFN*		
07	Colombo	BFO	3.50	$ T	TA	01 JAN 83	FUFN*	#1	
08	Colombo	BFO	4.50	$ T	TA	01 JAN 83	FUFN*	#2	
09	Singapore	BFO	11.00	$ T	TA	01 JAN 83	FUFN*		

J.A. 33

* Firm Until Further Notice
Condition #1 - Minimum Delivery of 1 to 500 Metric Tons
Condition #2 - Minimum Delivery of 501 Metric Tons and over

This Contract Shall not be Amended or Rescinded without the Prior Written Agreement of the Parties hereto.

CONTINUATION OF EXHIBIT A TO THE MARINE FUELS CONTRACT

Dated: 08 APR 83 between Waterman Steamship Corporation and Exxon International Company (a division of Exxon Corporation)

Remarks:

ARTICLE V - PAYMENT

SECTION 5.2

Payment shall be made as directed by Seller. Until otherwise directed by Seller, Buyer shall pay Seller in U.S. dollars for each delivery of Marine Products to any vessel upon any order (or notice) given by or on behalf of Buyer, wherever delivered, together with barging and any other charges, if any; to Seller. Payment of Seller invoices bearing an invoice date of the ninth through the twenty third of any month is to be received by Seller during the period from the date of invoice to the fifteenth day of the following month. Payment of Seller's invoices bearing an invoice date of the twenty-fourth through the eighth day of the following month shall be received by Seller during the period from the date of invoice to the last day of the following month. A service charge shall accrue to Seller at the rate of 2% per month from the end of the respective period to the date payment is received by Seller and shall be payable as directed by Seller. Seller reserves the right to modify or terminate credit arrangements upon notice to Buyer.

Buyer_____ Seller_____

[Excerpt of deposition of Edward J. Matters attached as Exhibit 15 to Paré Affidavit filed 5/31/88]

and not supplying any longer.

Actually, there come a point in time in mid-October when they weren't — there were two nominations pending at Jeddah and Arabian Marine got tough and said they were not going to supply them at that point in time.

Q. Excuse me for one second.

A. Okay.

Q. Did you personally have those conversations?

A. With Hakim, yes.

Q. Who is Hakim?

A. Hakim is an Arabian Marine Operating Company representative in London.

Q. He personally informed you?

A. Yes.

Q. What was that again?

A. That they would, unless Waterman paid a substantial amount of the overdues they were not going to supply any more ships of Waterman's for their own account.

Q. Were there any pending bunker deliveries at that point?

A. There were two at the time. One was the STONEWALL JACKSON and the other one was the WILLIAM HOOPER. They were pretty close together in mid — end of October time frame.

Q. How imminent was the first of those deliveries?

A. The first one was very close as I recall. I think the delivery ultimately took place on the 19th, and we had about a day's notice to make a decision whether or not to accept the business back as Exxon's business and accept the credit risks or delay the ship.

Q. What did you do then after you received that telephone call?

A. This was only a report to the salespeople who had Waterman's other business and to our treasury people who were concerned about the financial status of Waterman. They presumably sat down and had a meeting and decided okay, we will take the STONEWALL JACKSON because of the potential for delaying the ship and we wanted to continue to service Waterman so we accepted the STONEWALL JACKSON delivery and told Arabian Marine they can go ahead and deliver that for our account.

We told them we had not made a decision on the next one, the WILLIAM HOOPER, but we will get back to them on that.

Q. Did somebody tell you that your company would accept?

A The treasurer.

Q. The STONEWALL JACKSON delivery?

A. My recollection is that the treasurer's people

* * *

Q. KB standard for a thousand barrels?

A. Thousand barrels, and then similar for the WILLIAM HOOPER. The estimated delivery date would have been the

25th and they were looking for 28,000 barrels, and that would have been about $765,000.

Q. There is writing in the far right-hand side of this paper; is that yours?

A. No, it is not. I am presuming it is Jim Sharkey's, but I don't know.

Q. "Please tell Ron we have accepted his JACKSON."

A. Yes. This was for Jim Sharkey, the salesman, to bill Waterman, we were going to take the STONEWALL JACKSON deliver because he, Ryan, was talking with Hakim in London, and Hakim was telling him we were not delivering.

Q. Telling Ryan that?

A. Telling Ryan that. It was to allay Mr. Ryan's fears that the ship would be delivered, that we were going to accept the credit risk and make the delivery.

Q. And —

A. Then I told Mr. Hakim —

Q. This entry, speaking today with Hakim —

A. Ryan.

Q. And the bottom entry?

A. To let him know I had also spoken to Hakim in London saying that we would take the JACKSON, but we had not made any decision about the others at this point in time.

Q. In your conversation with Hakim, was it the same day of the preparation of this memo?

A. That's correct.

receivable security such as letter of credit or personal guarantee. Waterman did not raise objection and re-emphasized their good banking relationship and offered to arrange high level contact at Manufacturers Hanover Bank to satisfy Exxon needs.

- November 7th (Monday) - Exxon (Sharkey) called Waterman to confirm bank contact arrangements since Exxon wished to commence dialogue with Manufacturers Hanover Bank. Waterman (Ryan) reported that arrangements had not been made. Exxon's Treasurers (Rudzki) called Waterman's V.P. Finance (B.F. Sauer) to reiterate Exxon's request for security.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXXON CORPORATION, Plaintiff, -against- CENTRAL GULF LINES, INC. *in personam* and the M/V GREEN HARBOUR (ex WILLIAM HOOPER) *in rem*, her engines, boilers, tackle, etc. and a certain letter of Credit No. P 621208 dated December 26, 1984 issued by the Chase Manhattan Bank, N.A., *in rem*., Defendants.	REPLY AFFIDAVIT IN FURTHER SUPPORT OF EXXON MOTION FOR SUMMARY JUDGMENT 86 Civ. 9445 (WCC)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ARMAND M. PARÉ, JR., being duly sworn, deposes and states:

1. I am counsel to the firm of Nourse & Bowles, attorneys for plaintiff, Exxon Corporation ("Exxon"). I make this affidavit in reply to answering papers submitted by defendant, Central Gulf Lines, Inc. ("Central Gulf") and in opposition to cross-motion of Central Gulf.

2. Central Gulf's answering papers make the unsupportable conclusionary allegation that the delivery of fuel oil made to the vessel WILLIAM HOOPER at Jeddah on

October 26, 1983 was the result of Waterman Steamship Corp. ("Waterman") having ordered the fuel oil via the Exxon "Mariner" communications system on September 29, 1983. The unrebutted evidence already introduced shows this to be incorrect and shows that the local fuel oil supplier, Arabian Marine Operating Co., Ltd. ("Arabian Marine") refused to honor Waterman's September 29, 1983 order for fuel oil. The previously submitted and unrebutted evidence shows that Arabian Marine only agreed to supply bunkers on the strength of a subsequent order made by Exxon. Attached hereto as Exhibit "1" are three pages of Mr. Sharkey's transcript (pp. 55-56 and 65) evidencing that Exxon even reordered the bunkers from Arabian Marine through the Exxon "Mariner" communication system for the WILLIAM HOOPER and the STONEWALL JACKSON. Attached as Exhibit "2" is a copy of the Mariner cable referred to in Exhibit "1" for the WILLIAM HOOPER, which document was produced to Central Gulf pursuant to its request contained in Exhibit "1".

3. Attached as Exhibit "3" are pages 88-92 of the transcript of Mr. Rudzki regarding prior lien claims with which Exxon has been involved.

4. Attached as Exhibit "4" are pages 47-48 of the transcript of Mr. Rudzki showing that no one at Exxon was know to have been aware of the prohibition lien clause in Central Gulf/Waterman charter.

5. In addition to the Jeddah Delivery, Exxon made a delivery of gas oil to the Vessel at New York on October 7, 1983 (the "New York Delivery"). Central Gulf does not deny the fact of the New York Delivery but apparently seeks to avoid summary judgment by making the point that the delivery receipt for the New York Delivery has not been produced. This document has never been located despite diligent search. Obviously, the inability to produce a document which cannot be located, especially when it is only cumulative of other uncontested evidence, is not a bar to summary judgment. As indicated in Exhibit "5", the New York Delivery was physically

made by Exxon Company U.S.A., which is an unincorporated division of Exxon Corporation.

/s/ Armand M. Paré

Sworn to before me this
20th day of July, 1988

/s/ Mary T. Bannon

[Notary Stamp]

TO: BIGHAM, ENGLAR, JONES & HOUSTON
Attorneys for Defendant
Central Gulf Lines, Inc.
14 Wall Street
New York, New York 10005
(212) 732-4646

[Excerpt of deposition of Adam V. Rudski attached as Exhibit 3 to Paré Reply Affidavit filed 7/21/88]

Correct that to the BENJAMIN HARRISON.

MR. LAUGHLIN: what is the date of that?

MR. PARÉ: November 8.

(Whereupon, delivery receipt for the BENJAMIN HARRISON is marked as Exxon Exhibit B for identification)

Q. Sir, the account party there is Messrs. Exxon International?

A. That's correct.

Q. Is that the way that the bunker receipt should read?

A. Yes.

Q. That's how the other three should have read?

A. That's how the others should have read. At the time we made those deliveries they were made on Exxon's account.

Q. What is your title?

A. I am a section head in domestic credit and financial operations.

Q. What is the function of your section?

A. The function of my section is to manage accounts receivable, that is to evaluate credit, make sure that the collections are made and follow up on any problems that may exist in the various business lines that Exxon International sells to.

Q. Have you — have you or your department had any experience in enforcement of your bunker supplies through maritime liens?

A. Yes.

Q. Could you tell us what experience you had?

A. Well, in the last approximately five years that I have been with the treasurer's, in this job in the treasurer's function, we have made — we have collected under the maritime liens from States Steamship, a company in California that filed for Chapter 11.

Q. Who did you collect from in that case?

A. From Lykes Brothers.

What happened was the ship was transferred from States to Lykes and the maritime lien went with the vessel.

And we then threatened — we then threatened Lykes with the fact we will arrest the ship, and they have paid us.

MR. O'BRIEN: I will object to this whole line of questions. Different circumstance, different place, has no relevancy to this matter at all.

MR. LAUGHLIN: I move to strike.

Q. Did you have a credit check done in that case?

A. Yes.

You also asked if we have any other experiences and I can recall four other customers. We have bulk food carriers who — also similar situation to States Steamship.

We had Cleaver Trading which is — which was a customer in Denmark, and whose vessels were on time charters from Japanese owners. We had arrested or threatened to arrest vessels and we were paid.

MR. O'BRIEN: For once you are going to run out of luck.

Q. Any other incidents?

A. Then there was —

MR. O'BRIEN: We will be here all day. He is going into these totally unrelated incidents. He is talking about Denmark.

A. There was Dolphin Maritime, whose principal was a U.S.-Greek owner, who has paid us after the arrest of the vessel in New York.

There was — there were others. I don't recall. Ipris, another old Greek account, where again we arrested one ship threatened to arrest another. We also got paid.

Q. Does the name Bulk Foods refresh your recollection?

A. I mentioned Bulk Food, I think already which is similar. They were Chapter 11 bankruptcy or under the old code I guess.

Q. In those cases where you collected from a third party, had you or an affiliate made credit checks of the original customer?

A. Yes, for the Danish company, this was not our customer directly here in New York, but their were credit checks made by the office that did the actual selling, and certainly when it came to the bankruptcy or to inability to pay, we used the maritime liens.

Q. Sir, referring you to Central Gulf's Exhibit 10 and specifically to —

MR. LAUGHLIN: Are you finished with that line of questioning?

MR. PARÉ: Just about. You going to move to strike it?

MR. LAUGHLIN: Yes.

MR. O'BRIEN: I join in that request.

Q. What was your understanding on December 6 as to Exxon's rights, maritime lien rights against the Central Gulf vessels?

MR. LAUGHLIN: objection, calls for a legal conclusion.

MR. O'BRIEN: The man is not a lawyer.

Q. What was your understanding?

A. My understanding was that we will have and do have a maritime lien to arrest the vessels, since it was not part of the Waterman's estate and that we can assert our maritime lien.

In fact our concern was not so much whether we can, at least my understanding of it was we were not concerned whether we can or not assert the maritime lien. To me that was given. The concern was whether Central Gulf will have the ability to pay.

MR. O'BRIEN: This — I have a continuing objection. You are asking the witness to state an answer which is the very question put to the judge.

Q. And your understanding on December 6th was reflected in Page 2 of Central Gulf Exhibit —

A. That's correct, we have summarized that to our senior management.

Q. When you prepared Central Gulf Exhibit 10 did you consult with an attorney in connection with the preparation of that document?

A. Not specifically in the preparation of this document.

Q. Do you or your office have any contact with Central Gulf?

A. Yes. I have had contact with Central Gulf in the treasurer's function over the years.

Q. And could you describe how that connection takes place?

A. I have had a number of telephone conversations, as I said, over the years with Paul Morrison, the treasurer of

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXXON CORPORATION,	
Plaintiff,	REPLY AFFIDAVIT
-against-	IN FURTHER SUPPORT OF
CENTRAL GULF LINES, INC. *in personam* and the M/V GREEN HARBOUR (ex WILLIAM HOOPER) *in rem*, her engines, boilers, tackle, etc. and a certain letter of Credit No. P 621208 dated December 26, 1984 issued by the Chase Manhattan Bank, N.A., *in rem*.,	CENTRAL GULF'S MOTION FOR SUMMARY JUDGMENT 86 Civ. 9445 (WCC)
Defendants.	

State of New York)
) SS.:
County of New York)

FRANCIS A. MONTBACH, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and a member of the firm BIGHAM ENGLAR JONES & HOUSTON attorneys for defendant, Central Gulf Lines, Inc. et al. and having handled this matter since its inception am fully familiar with all the facts and proceedings heretofore and herein. I make this affidavit in reply to answering papers submitted by plaintiff, Exxon Corporation (hereinafter Exxon) and in opposition to plaintiff's Motion for Summary Judgment.

2. In its answering papers, Exxon claims that it did not waive its alleged right to a maritime lien and relied on the credit of the vessel. The facts, however, clearly contradict this allegation. The evidence already introduced shows that Exxon relied solely on the credit of Waterman Steamship Company (hereinafter "Waterman") when it facilitated the supply of bunker fuel oil to the WILLIAM HOOPER on October 26, 1983 at Jeddah. In addition to the already submitted evidence, defendants submit Adam V. Rudzki's Deposition Testimony evidencing that Exxon continuously monitored Waterman's financial situation prior to, at the time of and after the disputed delivery of bunker fuel oil. Attached as Exhibit "EE" are pages 27–29 of the transcript of Mr. Rudzki's deposition.

/s/ Francis A. Montbach

Francis A. Montbach

Sworn to before me this
1st day of August, 1988

/s/
Notary Public

[Notary Stamp]

TO: Nourse & Bowles
Attorneys for Plaintiff
Exxon Corporation
One Exchange Plaza
at 55 Broadway
New York, New York 10006

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXXON CORPORATION, Plaintiff, -against- CENTRAL GULF LINES, INC. *in personam* and the M/V GREEN HARBOUR (ex WILLIAM HOOPER) *in rem*, her engines, boilers, tackle, etc. and a certain letter of Credit No. P 621208 dated December 26, 1984 issued by the Chase Manhattan Bank, N.A., *in rem.*, Defendants.	JUDGMENT 86 Civ. 9445 (WCC)

WHEREAS, on May 24, 1988 plaintiff Exxon Corporation ("Exxon") filed a motion for summary judgment seeking the principal amount of $763,644.60 for supplying certain bunker fuel oil to the vessel M/V GREEN HARBOUR (ex WILLIAM HOOPER) at Jeddah, Saudi Arabia in October, 1983 and the principal amount of $13,241.63 for supplying certain marine diesel oil to said vessel at New York in October, 1983;

AND WHEREAS on June 22, 1988 defendant Central Gulf Lines Inc. ("Central Gulf") filed a cross motion for summary judgment seeking dismissal of plaintiff's two claims;

AND WHEREAS on March 3, 1989 the Court issued an Opinion and Order dismissing plaintiff's claim in the amount of $763,644.60 with respect to the Jeddah, Saudi Arabia supply and granting plaintiff's claim in the amount of $13,241.63 with respect to New York supply;

AND WHEREAS on March 13, 1989 Exxon filed a motion for reconsideration of the Court's Opinion and Order dated March 3, 1989;

AND WHEREAS on July 21, 1989 the Court issued an Opinion and Order denying Exxon's motion for reconsideration of the Court's Opinion and Order dated March 3, 1989,

NOW, THEREFORE,
IT IS HEREBY ORDERED,
ADJUDGED AND DECREED,
that:

1. Plaintiff's claim pertaining to the supply at Jeddah, Saudi Arabia in the amount of $763,644.60 is hereby dismissed.

2. Plaintiff's claim pertaining to the supply at New York in the principal amount of $13,241.63 is hereby granted with interest on that amount at 9% per annum from October 7, 1983 to September 15, 1989 in the amount of $7,078.67 for a total judgment of $20,320.30.

3. Exxon shall recover taxable costs in this action.

4. Exxon shall recover post-judgment interest on this judgment in accordance with 28 U.S.C. § 1961.

Dated: New York, New York
September 15, 1989

/s/ William C. Conner
U.S.D.J. 9/15/89

[Typed Notation: THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 9/15/89.]

Notation Pursuant to Paragraph 2(c) of the Clerk's Memorandum Concerning Printing the Joint Appendix

The following orders and opinions have been omitted in printing this joint appendix because they appear on the following pages in the appendices to the printed Petition for a Writ of Certiorari:

Page

Summary Order of the United States Court of Appeals for the Second Circuit dated April 5, 1990 affirming the judgment of the district court A-1

Opinion and Order of the United States District Court for the Southern District of New York dated July 21, 1989 denying Exxon Corporation's Motion for Reconsideration of the Court's Opinion and Order dated March 3, 1989..... A-3

Opinion and Order of the United States District Court for the Southern District of New York dated March 3, 1989 ..... A-22